# Unauthorised, Irregular, Fruitless and Wasteful Expenditure

The purpose of this Circular is to provide clarity on the procedures to be followed when dealing with unauthorised, irregular or fruitless and wasteful expenditure as defined in section 1 of the Municipal Finance Management Act (MFMA).

Municipalities are organs of state within the local sphere of government that collect monies from the public in the form of rates, taxes, levies, surcharges, duties and service charges, receive grants from national and provincial government, invest surplus cash and borrow for capital expenditure or bridging finance for short term purposes. These resources are appropriated by Council for the purpose of fulfilling its powers and functions, primarily to deliver services, in accordance with their mandate as set out in sections 151,153 and 156 of the Constitution.

In terms of section 4(2)(a) of the Municipal Systems Act (MSA) the council has a duty to use the resources of the municipality in the best interest of the local community. This duty is extended to individual councillors through the Code of Conduct for Councillors which states that a councillor must:

i. "perform the functions of office in good faith, honestly and in a transparent manner, and
ii. at all times act in the best interests of the community and in such a way that the credibility and integrity of the municipality are not compromised."

The Auditor-General has highlighted an escalating trend in unauthorised, irregular, fruitless and wasteful expenditure in municipalities over recent years, evident in audit opinions and summarised in the annual reports on local government. We have also noticed a sense of uncertainty amongst municipalities on the understanding of how irregular expenditure should be treated and who has the legislative power to deal with irregular expenditure. The uncertainty relates mainly to how municipalities should conclusively deal with such matters, the process to be followed and the manner in which such matters should be recorded and disclosed. This Circular aims to provide clarity in this regard so that there is a common understanding on the process to be followed in dealing with these categories of expenditure. In order to better illustrate the process to be followed, a flowchart is attached (Annexure C), which sets out a step by step process for dealing with irregular expenditure. This process flowchart will assist municipalities in dealing with irregular expenditure and also reduce the extent of irregular expenditure prior to the commencement of the next audit cycle.

The Circular is supported by a Register (Annexure A) which will assist municipalities in recording, keeping track and managing the categories of expenditure mentioned above in a more transparent and accountable manner. The Register will be a central source of information concerning these type of expenditures for Council and relevant external stakeholders, by clearly recording the details of the transaction, the type of

expenditure, the person liable for the expenditure and what measures were taken by the municipality to address the matter.

Each Council therefore has a duty to introduce and adopt policies and processes to:

a) Prevent unauthorised, irregular, fruitless and wasteful expenditure;
b) Identify and investigate unauthorised, irregular, fruitless and wasteful expenditure;
c) Respond appropriately in accordance with the law; and
d) To address instances of unauthorised, irregular, fruitless and wasteful expenditure conclusively.

## Defining unauthorised, irregular, fruitless and wasteful expenditure

### Unauthorised expenditure

Unauthorised expenditure is defined in section 1 of the MFMA as follows:

> "unauthorised expenditure", in relation to a municipality, means any expenditure incurred by a municipality otherwise than in accordance with section 15 or 11(3), and includes—
>
> (a) overspending of the total amount appropriated in the municipality's approved budget;
> (b) overspending of the total amount appropriated for a vote in the approved budget;
> (c) expenditure from a vote unrelated to the department or functional area covered by the vote;
> (d) expenditure of money appropriated for a specific purpose, otherwise than for that specific purpose;
> (e) spending of an allocation referred to in paragraph (b), (c) or (d) of the definition of "allocation" otherwise than in accordance with any conditions of the allocation; or
> (f) a grant by the municipality otherwise than in accordance with this Act.

Section 15 of the MFMA deals with appropriation of funds for expenditure and provides that a municipality may, except where otherwise provided in the MFMA, incur expenditure only in terms of an approved budget and within the limits of the amounts appropriated for the different votes in an approved budget. With reference to MFMA section 1 (a) in the definition above, a municipality's budget is divided into an operational budget and a capital budget. Overspending must be determined in relation to both the operational budget and the capital budget.

With reference to MFMA section 1(b) – a municipality's operational and capital budgets are divided into 'votes' which represent those components of the budget that have amounts appropriated for the financial year, for different departments or functional areas. The Municipal Budget and Reporting Regulations (MBRR) prescribe the structure and formats of municipal budgets, including votes, in Tables A1 to A10. Votes are informed by Table A3 (Budgeted Financial Performance: revenues and expenditure by municipal vote) and Table A5 (Budgeted Capital

Expenditure by vote, standard classification and funding). Budget Table A4 (Budgeted Financial Performance: revenue and expenditure) by implication is approved by the council and as such must also be taken into consideration when determining unauthorised expenditure. In other words, when considering unauthorised expenditure from an operating budget point of view, both Table A3 and A4 (read in conjunction with the supporting table SA1) of the MBRR would have to be considered. Overspending must also be determined in relation to each of the votes on *both* the operational budget and the capital budget. Where Council has approved a *virement policy* that allows the accounting officer to make limited shifts of funds between votes, this must also be taken into account.

With reference to MFMA section 1(c) – funds appropriated in a vote for a department may not be used for purposes unrelated to the functions of that department. In other words, an accounting officer or other official may not use funds allocated to one department for purposes of another department or for purposes that are not provided for in the budget. Where a Council has approved a virement policy, shifts made in accordance with that policy may be allowed, and must be taken into account when reviewing such expenditure.

With reference to MFMA section 1(d) – in addition to appropriating funds for a department's vote, the Council may also appropriate funds for a specific purpose within a department's vote, for example, for specific training initiatives or a capital project. Funds that have been designated for a specific purpose or project may not be used for any other purpose.

With reference to MFMA section 1(e) – the items referred to in the definition of 'allocation' are national and provincial conditional grants to a municipality and other 'conditional' allocations to the municipality from another municipality or another organ of state. Any use of conditional grant funds for a purpose other than that specified in the relevant conditional grant framework is classified as unauthorised expenditure.

With reference to MFMA section 1(f) – section 67 of the MFMA regulates the transfer of municipal funds to organisations and bodies outside government. In terms of this section, a municipality may only provide grants to organisations and NOT individuals. Therefore, any grant to an individual is unauthorised expenditure, unless it is in terms of the municipality's indigent policy or bursary scheme.

Therefore, valid expenditure decisions can only be made by council in terms of a budget or an adjustments budget. It follows that only the council may authorise instances of unauthorised expenditure and council must do so through an adjustment budget. This principle is further reiterated in section 32(2)(a)(i) of the MFMA read with regulation 25 of the MBRR which states that unauthorised expenditure must be authorised by the municipality in an adjustments budget that is approved by the municipal council. This is the rationale for the provisions in regulation 23(6) of the MBRR which provides the legal framework for the authorisation of unauthorised expenditure.

## Expenditures that are NOT classified as unauthorised expenditure

Given the definition of unauthorised expenditure, the following are examples of expenditures that are NOT unauthorised expenditure:

(i) Any over-collection on the revenue side of the budget as this is not an expenditure; and

(ii) Any expenditure incurred in respect of:

- any of the transactions mentioned in section 11(1)(a) to (j) of the MFMA;
- re-allocation of funds and the use of such funds in accordance with a council approved virement policy;
- overspending of an amount allocated by standard classification on the main budget Table A2 (Budgeted Financial Performance: revenue and expenditure by standard classification), as long as it does not result in overspending of a 'vote' on the main budget Table A3 (Budgeted Financial Performance: revenue and expenditure by municipal vote) and Table A4 (Budgeted Financial Performance: revenue and expenditure (read in conjunction with supporting Table SA1) of the MBRR; and
- overspending of an amount allocated by standard classification on the main budget Table A5 (Budgeted Capital Expenditure by vote, standard classification and funding) of the MBRR so long as it does not result in an overspending of a 'vote' on the main budget Table A5.

## Unauthorised expenditure on "non-cash" items

Municipalities have raised concerns over non-cash items being classified as unauthorised expenditure owing to the total amount of the budget being exceeded. Such expenditure relates to debt impairment, depreciation, asset impairment, transfers and grants as appropriated in Table A4 (Budgeted Statement of Financial Performance: revenue and expenditure) of the MBRR.

Although these expenditures are considered non-cash items as there is no transaction with any service provider or supplier, an under provision during the budget compilation process is a material misstatement of the surplus or deficit position of the municipality. This could be the result of poor planning, budgeting or financial management, or unknown events that gave rise to the asset and debt impairment after adoption of the budget. In this regard Table A4 (Budgeted Statement of Financial Performance: revenue and expenditure) must be read in conjunction with supporting Table SA1 of the MBRR.

We are aware of the challenge around correcting errors or omissions relating to actuarial calculations from a budget implementation point of view, given the timing of such calculations. In the interim, this could be addressed through an adjustment in the budget in February each year but before financial year end to correct any mistakes or errors relating to the actuarial calculations.

## Unforeseen and unavoidable expenditure

Unforeseen and unavoidable expenditure is discussed in section 29 of the MFMA and reads as follows:

(1) The mayor of a municipality may in emergency or other exceptional circumstances authorise unforeseeable and unavoidable expenditure for which no provision was made in an approved budget.

(2) Any such expenditure—
  (a) must be in accordance with any framework that may be prescribed;
  (b) may not exceed a prescribed percentage of the approved annual budget;
  (c) must be reported by the mayor to the municipal council at its next meeting; and
  (d) must be appropriated in an adjustments budget.

(3) If such adjustments budget is not passed within 60 days after the expenditure was incurred, the expenditure is unauthorised and section 32 applies.

The framework referred to in section 29(2)(a) of the MFMA is prescribed in chapter 5 of the MBRR, and contained in regulation 71 and 72. The following shall apply:

(i) the amount the mayor authorised as unforeseen and unavoidable expenditure exceeds the monetary limits set in regulation 72 of the MBRR, the amount in excess of the limit is unauthorised;

(ii) the reason for the mayor authorising the unforeseen and unavoidable expenditure does not fall within the ambit of regulation 71(1) of the MBRR, the expenditure is unauthorised;

(iii) the reason for the mayor not authorising the unforeseen and unavoidable expenditure falls outside the ambit of regulation 71(2) of the MBRR, the expenditure is unauthorised; and

(iv) the council does not appropriate the expenditure in an adjustments budget that is passed within 60 days after the expenditure was incurred, the expenditure is unauthorised.

## Irregular expenditure

Irregular expenditure is defined in section 1 of the MFMA as follows:

"irregular expenditure", in relation to a municipality or municipal entity, means—

(a) expenditure incurred by a municipality or municipal entity in contravention of, or that is not in accordance with, a requirement of this Act, and which has not been condoned in terms of section 170;

(b) expenditure incurred by a municipality or municipal entity in contravention of, or that is not in accordance with, a

requirement of the Municipal Systems Act, and which has not been condoned in terms of that Act;

(c) expenditure incurred by a municipality in contravention of, or that is not in accordance with, a requirement of the Public Office-Bearers Act, 1998 (Act No. 20 of 1998); or

(d) expenditure incurred by a municipality or municipal entity in contravention of, or that is not in accordance with, a requirement of the supply chain management policy of the municipality or entity or any of the municipality's by-laws giving effect to such policy, and which has not been condoned in terms of such policy or by-law,

but excludes expenditure by a municipality which falls within the definition of "unauthorised expenditure".

In this context 'expenditure' refers to any use of municipal funds that is in contravention of the following legislation:

- Municipal Finance Management Act, Act 56 of 2003, and its regulations;
- Municipal Systems Act, Act 32 of 2000, and its regulations;
- Public Office-Bearers Act, Act 20 of 1998, and its regulations; and
- The municipality's supply chain management policy, and any by-laws giving effect to that policy

## Fruitless and wasteful expenditure

Fruitless and wasteful expenditure is defined in section 1 of the MFMA as follows:

> "fruitless and wasteful expenditure" means expenditure that was made in vain and would have been avoided had reasonable care been exercised.

The concept of *fruitless and wasteful expenditure* is founded on public administration and accountability principles, to promote "efficient, economic and effective use of resources and the attainment of value for money". The idea is also founded on the fact that the council, the mayor and the accounting officer have a fiduciary responsibility to ensure that municipal resources are used in the best interests of the municipality and the local community.

In this context 'expenditure' refers broadly to processes that must be followed, transactions with service providers or suppliers and the use of other resources belonging to the municipality. The phrase 'made in vain' indicates that the municipality derived no value for money from the expenditure or the use of other resources. Fruitless and wasteful expenditure must fulfill both the conditions in the definition, namely, that it was made in vain and it would have been avoided had reasonable care been exercised. The treatment of such expenditure is dealt with later in this Circular.

## Process to be followed when dealing with unauthorised, irregular, fruitless and wasteful expenditure

### Unauthorised expenditure

In considering the authorisation of unauthorised expenditure, council must consider the following factors:

(i) Has the matter been referred to Council for a determination and decision?

(ii) Has the nature, extent, grounds and value of the unauthorised expenditure been submitted to Council?

(iii) Has the incident been referred to a council committee for investigation and recommendations?

(iv) Has it been established whether the accounting officer or official or public office bearer that made, permitted or authorised the unauthorised expenditure acted deliberately or in a negligent or grossly negligent manner?

(v) Has the accounting officer informed Council, the mayor or the executive committee that a particular decision would result in an unauthorised expenditure as per section 32(3) of the MFMA?

(vi) Are there good grounds shown as to why an unauthorised expenditure should be authorised? For example:

- the mayor, accounting officer or official was acting in the best interests of the municipality and the local community by making and permitting unauthorised expenditure;
- the mayor, accounting officer or official was acting in good faith when making and permitting unauthorised expenditure; and
- the municipality has not suffered any material loss as a result of the action.

In these instances, the council should authorise the unauthorised expenditure. Depending on the responses received in relation to each question, municipal councils are advised to also include the element of consequence management as part of the above consideration. In this regard, municipalities are referred to the Municipal Regulations on Financial Misconduct Procedures and Criminal Proceedings in assessing whether or not acts of financial misconduct were committed.

### Adjustments budgets to authorise unauthorised expenditure

Section 15 of the MFMA provides that a municipality may incur expenditure only in terms of an approved budget. This is confirmed by section 32(2)(a)(i) of the MFMA that provides that council may only authorise unauthorised expenditure in an adjustments budget.

Sections 28(c) and 28(g) of the MFMA, read together with regulations 23(1), 23(2), 23(4) and 23(6) of the MBRR, discusses when council may authorise unauthorised

expenditure in an adjustments budget. This can be addressed in three different adjustments budgets as follows:

(a) ***Adjustments budget for unforeseen and unavoidable expenditure***: An adjustments budget to allow council to provide *ex post* authorisation for unforeseen and unavoidable expenditure that was authorised by the mayor in terms of section 29 of the MFMA must be tabled in council at the "first available opportunity" or within the 60 days after the expenditure was incurred (see section 29(3) of the MFMA). Should either of these timeframes be missed, the unforeseen and unavoidable expenditure must be treated in the same manner as any other type of unauthorised expenditure, and may still be authorised in one of the other adjustments budgets process described below.

(b) ***Main adjustments budget***: In terms of regulation 23(6)(a) of the MBRR, council may authorise unauthorised expenditure in the adjustments budget which may be tabled in council "at any time after the mid-year budget and performance assessment has been tabled in the council, but not later than 28 February of the current year". Therefore unauthorised expenditure that occurred in the first half of the current financial year may be authorised by council in this adjustments budget. Where unauthorised expenditure from this period is not identified or investigated in time to include in this adjustments budget, it must be held over to the following adjustments budget process noted below.

(c) ***Special adjustments budget to authorise unauthorised expenditure****:* In terms of regulation 23(6)(b) of the MBRR, council may authorise unauthorised expenditure in a special adjustments budget tabled in council when the mayor tables the annual report in terms of section 127(2) of the MFMA. Kindly refer to MFMA Circular 63 for clarification in terms of the time period referred to in section 127(2) of the MFMA. This special adjustments budget "may only deal with unauthorised expenditure from the previous financial year which the council is being requested to authorise in terms of section 32(2)(a)(i) of the Act." This special adjustments budget therefore deals with:

- unauthorised expenditure that occurred in the first half of the previous financial year that was not included in the main adjustments budget or that was included but referred back for further investigation or further information;
- unauthorised expenditure that occurred in the second half of the previous financial year, and
- any unauthorised expenditure identified by the Auditor-General during the annual audit process.

The timing of this special adjustments budget requires:

- the municipality to report all the unauthorised expenditure in its annual financial statements (thus ensuring transparency regarding its performance with implementing the budget);

- the Auditor-General to audit the municipality's disclosure of its unauthorised expenditure and to add any further unauthorised expenditure identified in the audit process; and
- sufficient time (but also places a time limit) for instances of unauthorised expenditure to be properly investigated before being presented to council for a decision on whether or not to authorise it; the investigation is normally done by a council committee.

With regard to the accounting disclosure of unauthorised expenditure in the books of the municipality in terms of section 125 of the MFMA, we are aware that not all the unauthorised expenditure for a specific period relate to cash transactions. This therefore result in a distorted picture when reporting is done on this particular item in that the readers of the annual financial statements more often than not see unauthorised expenditure relating to non-cash items as money that was lost by the municipality. It is for this reason that we advise municipalities to distinguish in their annual financial statements between unauthorised expenditure relating to cash and non-cash items. This will provide readers with a clear picture of expenditure that was not in terms of the council approved annual budget (cash items) and those instances where incorrect estimations were made which resulted in unauthorised expenditure (non-cash items).

## Recovery of unauthorised expenditure

All instances of unauthorised expenditure must be recovered from the liable official or political office-bearer, unless the unauthorised expenditure has been certified as irrecoverable by the council after an investigation by a council committee in terms of section 32(2)(a)(ii) of the MFMA.

Once it has been established who is liable for the unauthorised expenditure, the accounting officer must, in writing, request that the liable official or political office-bearer pay the amount within 30 days or in reasonable installments. If the person fails to comply with the request, the matter must be handed to the municipality's legal division for the recovery of the debt through the normal debt collection process.

Municipalities and municipal entities are reminded to incorporate consequence management processes as part of the expenditure recovery assessment. In other words, whenever unauthorised expenditure is incurred and it is referred to the council committee for investigation in terms of section 32(2)(a)(ii) of the MFMA, the committee must also assess whether or not the action or failure to act by any official constitute financial misconduct as defined in sections 171 and 172 of the MFMA and make an appropriate recommendation to council for further action in terms of chapter 15 of the MFMA read with the Municipal Regulations on Financial Misconduct Procedures and Criminal Proceedings.

## Irregular expenditure

In terms of section 32(2)(b), irregular expenditure may only be written-off by Council if, after an investigation by a council committee, the irregular expenditure is certified as irrecoverable. In other words, writing-off is not a primary response, it is

subordinate to the recovery processes, and may only take place if the irregular expenditure is certified by Council as irrecoverable.

With reference to (a) as defined, - in terms of section 170 of the MFMA, only the National Treasury may condone non-compliance with a regulation issued in terms of the MFMA or a condition imposed by the Act itself. Municipal Councils therefore have no power in terms of the MFMA to condone any act of non-compliance in terms of the MFMA or any of its Regulations. Section 32(2)(b) of the MFMA provides the council only with the power to consider and resolve on the expenditure. Municipal Councils are therefore advised to ensure that the wording of their council resolutions are consistent with the wording in section 32(2)(b) of the MFMA i.e. "council hereby certify the expenditure as irrecoverable and resolve that it be written off or for recovery of the funds". Municipal councils should note that its ability to resolve on the irregular expenditure is not dependent on National Treasury's decision in relation to the municipality's application for condonation in terms of section 170. It is solely dependent on the investigation and recommendation from the council committee. Whatever the municipal council resolves is sufficient for the municipality to adjust its annual financial statements from an accounting disclosure perspective. The treatment of expenditure associated with the non-compliance is therefore the responsibility of the Council and is elaborated on later in this Circular.

With reference to (b) as defined – there is no provision in the Municipal Systems Act that allows for a contravention of the Act to be condoned. Nevertheless, should a municipality wish to request that an act of non-compliance with any provision of the MSA be condoned, then the accounting officer should address the request to the Minister of Co-operative Governance and Traditional Affairs, who is responsible for administering the MSA. The resultant expenditure should however be dealt with in terms of section 32(2) of the MFMA.

With reference to (c) as defined – there is no provision to allow irregular expenditure resulting from a contravention of the Public Office-Bearers Act to be condoned. This is consistent with section 167(2) of the MFMA, which provides that such irregular expenditure cannot be written-off and must be recovered from the political office-bearer concerned.

With reference to (d) as defined – a council may condone a contravention of the council approved SCM policy or a by-law giving effect to such policy, provided that the contravention, is not also a contravention of the MFMA or the SCM regulations, in which case (a) applies and then only National Treasury can condone a contravention of the SCM regulations. Any such requests must be accompanied by a full motivation and submitted to mfma@treasury.gov.za for consideration. Municipalities and municipal entities are cautioned that this is an onerous process and should not be taken lightly.

Once the Accounting Officer or Council becomes aware of any allegation of irregular expenditure, such allegation may be referred to the municipality's disciplinary board or any other appropriate investigative body for investigation, to determine whether or not grounds exist for a charge of financial misconduct to be laid against the official liable for the expenditure. Further guidance on the processes to follow in

investigating allegations of financial misconduct can be found in the Municipal Regulations on Financial Misconduct Procedures and Criminal Proceedings read with MFMA Circular 76.

## Ratification of minor breaches of the procurement process

In terms of regulation 36(1)(b) of the Municipal Supply Chain Management Regulations, the supply chain policy of a municipality may allow the accounting officer to ratify any minor breaches of the procurement processes by an official or committee acting in terms of delegated powers or duties which are purely technical in nature. Where a municipality's supply chain management policy does not include this provision the accounting officer cannot exercise this ratification power. It is important to note that the accounting officer can only rely on this provision if the official or committee who committed the breach had the delegated authority to perform the function in terms of the municipality's adopted System of Delegations, which must be consistent with the MFMA and its regulations. The process to deal with minor breaches of the SCM policy is contained in a flowchart, refer to (Annexure B).

Note that the accounting officer may only ratify a breach of *process*, and not the irregular expenditure itself, which means that the 'irregular' expenditure will still remain irregular. The responsibility to ratify the actual irregular expenditure vests with the Council and processes to deal with such matters are outlined in section 32(2) of the MFMA read together with Regulation 74 of the MBRR.

Regulation 36(2) states that the accounting officer must record the reasons for any deviations and report to the next Council meeting, and disclose this expenditure in a note to the annual financial statements. The emphasis is on recording the "reasons for any deviations and the associated expenditure".

All breaches of a municipality's SCM policy will result in irregular expenditure, in the event that expenditure is incurred; the monetary value of this irregular expenditure is not relevant. The issue of whether the breach is minor or material relates to the nature of the breach and the intent of those responsible for the breach; not to the monetary value thereof.

In terms of regulation 36 of the SCM Regulations, the accounting officer is responsible for deciding whether a particular breach of procurement processes is minor or material. In exercising this discretion the accounting officer must be guided by:

a) the specific nature of the breach: is it simply technical in nature, not impacting in any significant way on the essential fairness, equity, transparency, competitiveness or cost effectiveness of the procurement process?
b) the circumstance surrounding the breach: are the circumstances justifiable?
c) the intent of those responsible for the breach: were they acting in good faith?
d) the financial implication as a result of the breach: what was the extent of the loss or benefit?

All the factors above must be considered before the accounting officer exercise his or her discretion. The accounting officer would have to consider the merits of each breach of the procurement processes and take a decision as to whether it should be classified as a minor or material breach.

Note that this category only covers breaches of procurement processes in the municipality's SCM policy and not breaches of other legislation or regulations.

It is important to highlight that, in terms of the regulation 36 of the SCM Regulations, only the accounting officer can consider the ratification of minor breaches of procurement processes that are purely of a technical nature.

It is advisable that the accounting officer implement appropriate processes in the municipality's SCM policy to investigate the nature of the breach so that he/she can make an informed decision on corrective action. In the event that a breach falls outside the classification of a minor breach, the accounting officer cannot follow the remedy contained in regulation 36 (1) (b).

The MFMA and the SCM regulations do not specify what these processes should be, however, it is recommended that accounting officer investigate the nature of the breach through its Internal Audit Unit or any other investigation body and adopt corrective action as recommended by the Audit Committee.

The SCM regulation 36(2) specifies a separate process for reporting the ratification of minor breaches to council, after they have been ratified by the accounting officer. The findings of any investigation must be reported to the accounting officer for consideration when making a decision in this regard. It is important to maintain documentary evidence for audit purposes.

### Disciplinary and criminal charges for unauthorised, irregular, fruitless and wasteful expenditure

If, after having followed a proper investigation, the council concludes that the political office-bearer or official responsible for making, permitting or authorising unauthorised, irregular, fruitless and wasteful expenditure did not act in good faith or committed an act of financial misconduct, then the municipality must consider instituting disciplinary action and criminal charges against the liable person/s in terms of chapter 15 of the MFMA read with the Municipal Regulations on Financial Misconduct Procedures and Criminal Proceedings.

If the action of the person(s) liable falls within the ambit of the above description, then the council, mayor or accounting officer (as may be relevant) must institute disciplinary charges as follows:

(i) *Financial misconduct in terms of section 171 of the MFMA read with the Municipal Regulations on Financial Misconduct Procedures and Criminal Proceedings*: in the case of an official that deliberately or negligently:

- contravened a provision of the MFMA which resulted in unauthorised, irregular, fruitless and wasteful expenditure; or

- made, permitted or authorised an irregular expenditure (due to non-compliance with any of legislation mentioned in the definition of irregular expenditure);

(ii) *Breach of the Code of Conduct for Municipal Staff Members*: in the case of an official whose actions in making, permitting or authorising unauthorised, irregular, fruitless and wasteful expenditure constitute a breach of the Code; and

(iii) *Breach of the Code of Conduct for Councillors*: in the case of a political office-bearer, whose actions in making, permitting or authorising unauthorised, irregular, fruitless and wasteful expenditure constitute a breach of the Code. This would also include instances where a councillor knowingly voted in favour or agreed with a resolution before council that contravened legislation resulting in unauthorised, irregular, fruitless and wasteful expenditure when implemented, or where the political office-bearer improperly interfered in the management or administration of the municipality.

## Recovery of irregular expenditure

All instances of irregular expenditure must be recovered from the liable official or political office-bearer, unless the expenditure is certified by the municipal council, after investigation by a council committee, as irrecoverable and written off by the council in terms of section 32(2)(b) of the MFMA. The National Treasury has issued a Municipal Public Accounts Committee (MPAC) Guideline and Toolkit, supported by MFMA Circular 92. This can also be used to clarify the roles and responsibilities of MPAC and for training purposes. Members of the MPAC who would be considering the recoverability of all unauthorised, irregular, fruitless and wasteful expenditure are encouraged to use this Guide as they perform their responsibilities in terms of section 32 of the MFMA.

Irregular expenditure resulting from breaches of the Public Office-Bearers Act is an exception in that the irregular expenditure must be recovered from the political office-bearer to whom it was paid, who might not have been responsible for making, permitting or authorising the irregular expenditure.

Once it has been established who is liable for the irregular expenditure, the accounting officer must in writing request that the liable political office-bearer or official pay the amount within 30 days or in reasonable installments. If the person fails to comply with the request, the matter must be recovered through the normal debt collection process of the municipality. The municipality can also institute measures to recover money's paid from suppliers of assets, goods or services not received, as may be appropriate.

Municipalities and municipal entities must take note of the Public Audit Amendment Act, Act 5 of 2018, and regulations issued, which amongst others, provides for the Auditor-General to issue a certificate of debt where an accounting officer or accounting authority has failed to recover losses from a responsible person and to instruct the relevant executive authority to collect the debt.

## Quantifying the full extent of irregular expenditure

The municipality must quantify the total amount of irregular expenditure unless it is impractical to do so. In terms of GRAP3, applying a requirement as impracticable is when the municipality cannot apply it after making every reasonable effort to do so. Insufficient time cannot be used as a justification for impracticability.

The municipality's exercise of quantifying the irregular expenditure must focus on the year under review. However, if the non-compliance was identified on a multi-year contract that was identified in prior years, the irregular expenditure on that specific contract must be quantified from inception of the contract. Furthermore, if the municipality was qualified on the completeness of irregular expenditure in the prior year(s), the municipality's exercise of quantifying the full extent of the irregular expenditure must date back to the year the qualification was reported, in order to ensure that the qualification is sufficiently addressed.

A municipality may only disclose impracticability after making every reasonable effort to quantify the full extent of the irregular expenditure.

## Unauthorised expenditure and municipal entities

The definition of unauthorised expenditure in section 1 of the MFMA makes specific reference to a municipality and does not incorporate a municipal entity in the definition. It therefore follows that a municipal entity cannot incur unauthorised expenditure for purposes of the MFMA.

In terms of section 87(8) of the MFMA, a municipal entity may incur expenditure only in accordance with its approved budget or adjustment budget. Therefore, where a municipal entity overspends its budget, such expenditure will be irregular expenditure as the municipal entity incurred expenditure in contravention of a provision of the MFMA.

When disclosing this expenditure, the parent municipality will disclose it as unauthorised expenditure since council approves a consolidated budget incorporating allocations for both the parent municipality and the municipal entity. The municipal entity will disclose the same amount as irregular expenditure.

## Fruitless and wasteful expenditure

The processes to respond appropriately to fruitless and wasteful expenditure are similar to the following three processes outlined for irregular expenditure:

(i) *disciplinary charges* against officials and political office bearers;
(ii) *criminal charges* against officials and political office-bearers; and
(iii) *recovery* of the fruitless and wasteful expenditure from the liable persons.

The description of the categories of irregular expenditure in the above three instances can be applied directly to fruitless and wasteful expenditure. The

difference is that fruitless and wasteful expenditure can arise in any circumstance and is not dependent on non-compliance with any legislation.

Council should follow section 32(2)(b) of the MFMA when dealing with instances of fruitless and wasteful expenditure.

## Register of unauthorised, irregular, fruitless and wasteful expenditure

All instances of unauthorised, irregular, fruitless and wasteful expenditures must be reported to the mayor, the MEC for finance and local government in the province, the Auditor-General, disclosed in the annual report, and to council. This disclosure will assist in addressing challenges relating to expenditure control and transparent reporting in order to strengthen accountability and give full effect to the compliance, monitoring, reporting and support measures introduced by the Provincial and National Treasuries as required in the MFMA.

The introduction of a 'register' to capture unauthorised, irregular, fruitless and wasteful expenditure will ensure that financial management in municipalities and municipal entities are improved, resulting in changes to audit outcomes.

All municipalities and municipal entities must prevent the instances of prohibited expenditures. The accounting officers need to ensure that the municipality and municipal entity has proper processes in place to record and manage prohibited expenditures, should they occur. Therefore, as part of complying with sections 62(1)(d) and 95(d) of the MFMA, accounting officers (who may delegate the task to the chief financial officer) must set-up and maintain a *Register of Unauthorised, Irregular, Fruitless and Wasteful Expenditures*.

Annexure A sets out the minimum information that should appear in such a *Register*. Municipalities and municipal entities are free to add more detail should they deem this necessary. The aim of the *Register* is also to serve as a tool for recording all unauthorised, irregular, fruitless and wasteful expenditures and for tracking progress in dealing with the consequences flowing from such expenditures until all the issues that gave rise to the expenditures are properly resolved in accordance with the legal framework.

Municipalities and municipal entities are required to implement a register of unauthorised, irregular, fruitless and wasteful expenditure for all transactions falling within this category and ensure it is updated on a continuous basis. This information will allow management to address such matters more thoroughly and within appropriate timeframes. This information can also be used to implement mitigation measures, which may form part of the internal and external audit process.

## Disclosure of irregular expenditure in the Annual Financial Statement

In terms of section 125(2) of the MFMA, the notes to the annual financial statements of a municipality and municipal entity must include, amongst others, particulars of any material losses and any material irregular or fruitless and wasteful expenditures, including in the case of a municipality, any material unauthorised expenditure that occurred during the financial year, and whether these are recoverable.

Annexure D, describes in detail, the disclosure and accounting treatment of irregular, fruitless and wasteful expenditure.

## Conclusion

This MFMA circular provides for a basis by which municipalities can define, identify and respond to instances of unauthorised, irregular, fruitless and wasteful expenditure.

A Register of unauthorised, irregular, fruitless and wasteful expenditure must be introduced for all transactions falling within this category.

All expenditure falling into the above category must be investigated as required by the MFMA, recommendations submitted to Council for consideration and decisions taken to attend to such matters, where appropriate.

The consequence management framework has been strengthened as it relates to financial misconduct with the establishment of Disciplinary Board and clarifying the roles and responsibilities of Municipal Public Accounts Committees, and other functionaries.

Municipalities and municipal entities must take note of the amendments to the Public Audit Act, which also provides measures to address matters not dealt with timeously and conclusively by the Municipal administration and Council.

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**March 2019 (updated)**

Annexure A: Register of Unauthorised, Irregular, Fruitless and Wasteful Expenditure
Annexure B: Process Flow to address Minor Breaches of the SCM Policy
Annexure C: Process Flow to address Irregular Expenditure
Annexure D: Disclosure and Accounting Treatment for Irregular, Fruitless and Wasteful Expenditure